

APPEAL NO. 010120

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on December 20, 2000, the hearing officer resolved the disputed issue by determining that the appellant (claimant) did not sustain a compensable injury on _____, and that he did not have disability. The claimant appeals, reurging the evidence he presented below. The respondent (carrier) urges in reply that the evidence is sufficient to support the challenged determinations.

DECISION

Affirmed.

The claimant testified that on _____, while working as a porter at the automobile dealership where he had commenced employment three weeks earlier, the business manager, Mr. D, approached him in the afternoon and stated that if he, Mr. D, had not returned to the premises by the time the business closed for the day, he wanted the claimant to move Mr. D's new motorcycle into a bay and put the keys in Mr. D's desk drawer. The claimant further stated that later that day he started the motorcycle and attempted to drive it into a bay but collided with a wall and was injured. The claimant contended that he was following the instructions of the business manager and thus, in essence, did not deviate from the course and scope of his employment in starting and riding the motorcycle. He conceded that there was "no business reason" to move the motorcycle. Mr. D testified that he did not instruct or authorize the claimant to move the motorcycle but rather told him that if he had not returned before closing time to simply remove the keys from the ignition and put them in his, Mr. D's, desk.

The claimant had the burden to prove that he sustained an injury in the course and scope of his employment and that he had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence. (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate-reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight

and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The hearing officer's discussion of the evidence makes clear that she did not find the claimant's testimony persuasive concerning his having been instructed to move the motorcycle.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge